

200510037



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

DEC 14 2004

*Uniform Issue List: 408.00-00*

*SE:T:EP:RA:T3*

**LEGEND:**

Bank A =

Amount D =

Amount E =

Amount F =

IRA X =

IRA Z =

Dear

This is in response to your letter dated April, 15, 2003, in which you requested a ruling asking for a waiver of the 60 day rollover requirement. A letter dated July 9, 2004 supplemented the request.

You have submitted the following facts and representations:

On [REDACTED] Amount F was distributed to you from IRA X. Amount F represents Amount D (the total amount in the IRA) minus Amount E which was withheld for federal income tax. On [REDACTED] you invested the money at Bank A with the intent of eventually rolling over Amount D into an IRA at Bank A. The 60 day period for rolling over the distribution expired on [REDACTED]. On [REDACTED] you deposited, by means of a transfer, the funds into IRA Z.

During the period referred to in the above paragraph, your wife was suffering from leukemia and undergoing chemotherapy treatment. Your wife developed an infection because of the treatment. Such infection lasted until the end of March. Furthermore, during that period your daughter was pregnant.

During the last three weeks of your daughter's pregnancy, your daughter was suffering from toxemia and gallstones, and was in severe pain. You and your wife were caring for your daughter at this time, and also taking care of your daughter's 18 month old child. Your daughter had her baby on [REDACTED] two days before the 60-day period expired.

Thus, in short, a combination of your wife's illness, your daughter's complicated pregnancy, your daughter's illness, and your having to care for your grandchild resulted in you failing to satisfy the 60-day rollover requirement by a minimal period of time.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of Amount D, because the failure to waive such requirement would be against equity or good conscience.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such

receipt such individual received any other amount described in section 408(d)(3)(A)(I) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented by you demonstrates that you were unable to complete the transaction because of serious medical conditions existing in your family.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of the amount from IRA X. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such distribution, the deposit into IRA Z, made by means of a transfer, will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code, if any.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable thereto.

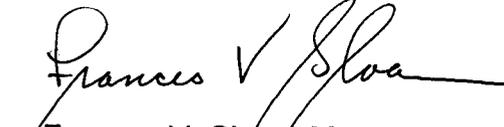
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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If you wish to inquire about this ruling, please contact \*\*\*\*\* (ID \*\*-  
\*\*\*\*\*) at (\*\*\*) \*\*\*\_\*\*\*\*. Please address all correspondence to SE: T: EP :RA:T3.

Sincerely yours,



Frances V. Sloan, Manager,  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose